

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KATHEREN RODRIGUEZ,

Plaintiff,

vs.

WAL-MART ASSOCIATES, INC.,

Defendant.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
RULE 56(D) REQUEST AND
ALLOWING AMENDED RESPONSE
TO MOTION FOR SUMMARY
JUDGMENT

Case No. 1:10-CV-1 TS

In her response to Defendant's Motion for Summary Judgment,¹ Plaintiff does not dispute the facts presented in Defendant's Motion. Instead, Plaintiff argues that it is entitled to conduct further discovery in order to establish its case. Plaintiff's offers two reasons why additional discovery is necessary before Plaintiff can properly respond to Defendant's Motion or before this Court can rule on the Motion: (1) Plaintiff alleges that "[i]t is likely that in deposing the two employees that arrived at the accident scene shortly after the fall that the issue would be resolved

¹Docket No. 11.

one way or the other[;]” and (2) “additional discovery may be necessary to determine whether or not there may be other video footage of the accident or the area surrounding the accident shortly before the accident occurred.”²

The Court finds Plaintiff’s request procedurally defective. In seeking leave to pursue further discovery, Plaintiff fails to cite the appropriate federal rule, Fed.R.Civ.P. 56(d).³ More importantly, Plaintiff’s request fails to comply with the strict requirements of Rule 56(d). Under Rule 56(d), the nonmovant must show “by affidavit or declaration, that for specified reasons, it cannot present facts essential to justify its opposition.”⁴ Plaintiff has failed to provide the Court with the required affidavit or declaration supporting its requested relief. Because of these failures, the Court will deny the request.

It is therefore,

ORDERED that Plaintiff’s Rule 56(d) request is DENIED. It is further

ORDERED that Plaintiff shall have twenty (20) days from the date of this Order to amend its response to Defendant’s Motion for Summary Judgment. Defendant shall thereafter have fourteen (14) days to file an amended reply to Plaintiff’s response.

The January 28, 2010 hearing is hereby STRICKEN.

²Docket No. 13.

³Formerly, Fed.R.Civ.P. 56(f).

⁴Fed.R.Civ.P. 56(d).

DATED January 26, 2011.

BY THE COURT:



TED STEWART
United States District Judge